Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 03-38
Philippine Long Distance Telephone Company	)	
Globe Telecom, Inc.	)	
	)	
AT&T Emergency Petition for Settlement	)	
Stop Payment Order and Request for	)	
Immediate Interim Relief	)	
	)	
Petition of WorldCom, Inc., for Prevention of	)	
"Whipsawing" on the U.S.–Philippines	)	
Route	)	

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY'S CONSOLIDATED OPPOSITION TO AT&T AND WORLDCOM PETITIONS

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TABLE OF CONTENTS

Philippine Long Distance Telephone Company ("PLDT"), by its attorneys, hereby submits its opposition to the petitions (the "Petitions") filed against it by AT&T and WorldCom, Inc. ("WorldCom"), also referred to herein as the "Petitioners", in the above-referenced proceeding.[1]

I. INTRODUCTION AND SUMMARY

AT&T and WorldCom ask the Commission to take the extraordinary action of requiring all U.S. carriers to suspend payments to PLDT in order to pressure PLDT to reduce its termination rates to AT&T and WorldCom. Yet the termination rate that AT&T and WorldCom refuse to pay -- twelve cents per minute -- remains 37 percent below the FCC's benchmarks. This rate is 24 cents below where it stood just four years ago, a drop of 67 percent, and is reflective of the highly competitive market in which PLDT now operates. This market environment belies Petitioners' claim to be the victims of a whipsaw, which operates where a foreign monopoly carrier has, and uses, its market power to pit one U.S. carrier against another.

The effort of AT&T and WorldCom to present themselves as victims of wrongful conduct does not square with the facts: They say they are being discriminated against, but the rates they are being asked to pay are no higher than those charged to any other U.S. or non-U.S. carrier, dozens of which have already agreed to the rates in question. Attempting to justify their demand for hasty action by the Commission that would effectively give them full relief in advance of a proceeding on the merits, AT&T and WorldCom suggest that they are victims of some sudden and precipitous action

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[1] Public Notice, "Petitions for Protection from Whipsawing on the U.S.-Philippines Route," DA 03-390, IB Docket No. 03-38 (Feb. 10, 2003).

on the part of PLDT. To the contrary, PLDT has sought to negotiate an increase in its termination rates with AT&T and WorldCom for the better part of a year, during which time PLDT has postponed any rate increase while trying to negotiate an agreement with them. But AT&T and WorldCom have refused to accept any rate increase and, after being informed in early December 2002 that the rates would go into effect on February 1, 2003, advised PLDT that they would not pay them. AT&T and WorldCom claim that, in being denied direct access to PLDT's facilities, they are being "punished" for seeking lower termination charges, but that is hardly the case. Rather, each company is not being permitted to directly terminate its traffic using PLDT's facilities for the simple reason that they have refused to pay for the service they are demanding.

The Petitioners claim they need emergency relief, but there is no real emergency. AT&T and WorldCom can and have rerouted their customers' calls through other carriers. Moreover, in one of several efforts to compromise, PLDT has offered to AT&T and WorldCom that, if each agreed to pay, on an interim basis, the same rate charged to other carriers, PLDT would continue to negotiate with AT&T and WorldCom and, if any reduced rate were agreed, would apply that rate retroactively. But AT&T and WorldCom refused this offer too, demonstrating that for them their dispute is not about access, but about cramming down even lower termination rates.

AT&T admits that the injunction standard set out in *Virginia Petroleum Jobbers Ass'n* v. *FPC* governs its petition for emergency relief,[2] but wholly fails to show that the standard is satisfied here. Even if AT&T and WorldCom were able to prove their claim of an illegal whipsaw – which their

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[2] 259 F. 2d 921, 925 (D.C. Cir. 1958).

papers show no likelihood they can do – the alleged harm is simply one for money. Such a claim is a classic case for *denial* of the sort of injunctive relief sought here. Particularly since AT&T has also admitted that it can terminate traffic in the Philippines without PLDT, and PLDT has already offered them a compromise that would protect them against any possible harm,[3] no irreparable injury exists.

AT&T also mischaracterizes the actions taken by the Philippine National Telecommunications Commission (the "NTC"), incorrectly claiming PLDT has violated NTC's Order. AT&T has chosen to report only the first decision of that agency; its second decision, which was issued after the NTC was apprised of <u>all</u> the facts, rather than just AT&T and WorldCom's version, (i) upheld the reasonableness of PLDT's rates that AT&T and WorldCom challenge here, (ii) directed that existing agreements incorporating these rates be maintained, and, (iii) while encouraging negotiation and the parties' efforts to seek an interim solution, declined to require PLDT to restore direct connections of AT&T or WorldCom circuits in the absence of such an agreement. The relief requested by AT&T and WorldCom, if granted, would put the FCC in direct conflict with the NTC, demanding that U.S. carriers cease to honor agreements that the NTC has directed to be continued in force. Such a decision would not well serve the public interest or long-range policy. Thus AT&T and WorldCom have failed to make the necessary showing for relief.

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[3] Declaration of Ramon Alger P. Obias ("Obias Decl.") at ¶¶ 3, 14.

II. FACTS

A. The Termination Rate at Issue Is 37 Percent Below the FCC's Benchmark Rate and, Even Taking into Account the Current Increase, Has Dropped by Two-Thirds Over the Last Four Years.

The FCC's fully-implemented benchmark rate for the Philippines is 19 cents per minute.[4] The rate here at issue, 12 cents per minute, is 37 percent below the FCC benchmark rate and is thus "presumptively just and reasonable" under the Commission's own decisions.[5] Incredibly, neither AT&T nor WorldCom ever mentions the FCC's benchmarks in their Petitions, nor do they venture to explain under what authority the FCC could force other U.S. carriers to refuse to honor settlement agreements with PLDT at rates that are presumptively just and reasonable.

AT&T and WorldCom each castigate PLDT for raising its termination rates by 4 cents per minute – an increase they uniformly describe as a "50 percent" increase. But neither AT&T nor WorldCom mentions that over the last four years PLDT has reduced its rates by 28 cents to a low of 8 cents per minute, and that, even with the current rate increase, PLDT's rates will have dropped from 36 cents per minute in the beginning of 1999 to their current 12 cents per minute – a decrease of 67 percent since 1999 and of 86 percent since 1993.[6]

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[4] *International Settlement Rates*, 12 FCC Rcd 19806, 19860 and 19977, Table 3 (1997) ("*Benchmarks Decision*").

[5] *Benchmarks Decision*, 12 FCC Rcd at 19939. Despite the Philippines' lower middle economic development status, the rates in question fall below the benchmarks (15 cents per minute) established by the Commission even for the most highly developed economic nations. *Id.* at 19860.

[6] Obias Decl. at ¶ 20.

B. The Philippines International Telecommunications Market Is Competitive.

The Philippines telecommunications market has become increasingly competitive over the past 10 years. Since 1993, 11 facilities-based carriers have entered the Philippines market, taking substantial market share from PLDT.[7] And, as noted above, termination rates have dropped precipitously in recent years, reflecting this increased competition.[8]

That the U.S.-Philippines market is competitive is confirmed by the Commission's October 2000 order approving the Philippines and PLDT for International Simple Resale ("ISR") treatment,[9] and the fact that the Philippines meets the even more stringent standard for complete removal of the International Settlements Policy ("ISP"). That standard – which was advocated by WorldCom – provides for complete removal of the ISP where foreign carriers "provide service in competitive markets."[10] Following the WorldCom proposed model, the Commission defined competitive markets to include routes "where U.S. carriers are able to terminate at least 50 percent of their U.S. billed traffic in the foreign market at rates that are at least 25 percent below the applicable benchmark settlement rate."[11] According to the Commission, where such conditions exist, there is

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[7] *Id.*

[8] *Id.*

[9] *See* Public Notice DA 00-2356 (Oct. 19, 2000).

[10] *1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements*, 14 FCC Rcd at 7983, 7964 *("ISP Reform Order").*

[11] *Id.* at 7965; *see also* Ex Parte Letter from Robert S. Koppel and Scott A. Shefferman, MCI WorldCom, Inc., to Magalie Roman Salas, Secretary, FCC, IB Docket No. 98-148 (Mar. 16, 1999) ("WorldCom Letter").

"convincing evidence that competitive pressures exist in the foreign market to constrain" the foreign carrier, and the foreign carrier is "unlikely to have the ability to exercise market power to harm U.S. consumers."[12] That the standard for elimination of the ISP is clearly met in this case is acknowledged by AT&T, albeit implicitly, which alleges that PLDT, Digital and Bayantel have a combined market share of about 90 percent,[13] and these carriers are seeking a rate increase of a mere four cents, to $0.12 per minute – 37% below the benchmark.[14]

C. AT&T and WorldCom Are Not Victims of "Whipsawing" by PLDT.

For several years AT&T and WorldCom have used their own substantial market share and have bypassed PLDT's facilities as a means of pressuring PLDT to drop its termination rates. As part of the incentive to lower PLDT's rates, AT&T and WorldCom promised increased traffic, but that has

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[12] *ISP Reform Order*, 14 FCC Rcd at 7986.

[13] AT&T Pet. at 2-3. Although PLDT disputes AT&T's claim as to PLDT's market share, it is nonetheless the case that the three carriers identified above have a combined market share such that, with each charging 37% below the benchmark rate, the ISP standard is clearly met.

AT&T's claim that the ISP should apply because of alleged "collusive behavior" is without factual support. AT&T Pet. at 10. Its so-called evidence of collusion, *see* AT&T Pet. at 4, is nothing more than a reference to an interconnection agreement among domestic carriers as to the charges they will impose on each other in circumstances where international traffic is passed from one carrier to another. Entry into such an interconnection agreement is required under Philippine law. The referenced agreement was, moreover, entered into after PLDT notified AT&T and WorldCom of PLDT's decision to raise its international termination charges and had no bearing on that decision. Obias Decl. at ¶ 19.

[14] AT&T's assertion that "the ISP is still applicable to PLDT on the U.S.-Philippines route, because this route does not appear on the Commission's list of routes from which the ISP has been removed," AT&T Pet. at 10-11, ignores the most salient and indisputable fact: that this route meets the standard for removal of ISP. The mere fact that PLDT has not sought a declaratory ruling from the Commission to do so is irrelevant, and it is disingenuous of AT&T to claim otherwise.

not occurred.[15] The losses of revenue attributable to lower rates at volumes that have not materially increased have been exacerbated by losses in foreign carrier revenue, due to bankruptcies and fraud.[16] These losses have harmed PLDT by denying it important revenues needed to improve telecommunication infrastructure within the Philippines.[17]

Recognition of the need to increase revenues led PLDT to advise AT&T, WorldCom, and other carriers last May, 2002, of PLDT's intention to increase its termination rates by August 1, 2002.[18] PLDT had numerous negotiation sessions with each of AT&T and WorldCom, but each company simply refused to agree to any rate increase.[19] Hoping to persuade the two largest carriers to agree to an increase, PLDT unilaterally extended its prior termination charges to each carrier while continuing offers to negotiate, first from August 1, 2002 to October 1, 2002, then until December 31, 2002, and then, finally, despite the lack of a written agreement from AT&T or WorldCom, through January 31, 2003. AT&T and WorldCom remained adamant, and PLDT made no progress in reaching an agreement whereby either carrier would pay any increased rate to terminate traffic via PLDT's facilities.[20]

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[15] Obias Decl. at ¶ 16.

[16] *Id.* at ¶ 21.

[17] *Id.*

[18] *Id.* at ¶ 2.

[19] *Id.*

[20] *Id.* at ¶¶ 2-4.

AT&T and WorldCom were not the only foreign carriers PLDT approached seeking an agreed rate increase; it was able to reach agreement, and has implemented termination rate increases, with dozens of other carriers. These other carriers, including U.S. carriers, have accepted the rate increase which AT&T and WorldCom have refused, and have thereby contracted with PLDT for termination of their traffic in the Philippines at non-discriminatory prices.[21]

Faced with continued stonewalling by AT&T and WorldCom, on December 13, 2002, PLDT was forced to notify each company that PLDT's termination rates would finally be increased as of February 1, 2003.[22] Each of AT&T and WorldCom then advised PLDT that it would not pay such a rate increase.[23] Having no agreement with these carriers, PLDT naturally suspended taking direct traffic from them as of February 1, 2003, the date that the rate increase became effective, since AT&T and WorldCom made clear they would not pay for termination of their traffic.[24]

PLDT's action was not undertaken to "punish" AT&T or WorldCom, but simply reflects the fact that, after many months of negotiation, those carriers refused to agree on termination rates and that the operative agreements have now lapsed despite the many months of negotiation.[25] PLDT is quite properly unwilling to continue to furnish services to these two large carriers at rates that are not

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[21] *Id.* at ¶ 5.

[22] *Id.* at ¶ 8, Exs. 2-3.

[23] *Id.* at ¶ 8.

[24] *Id.* at ¶ 10.

[25] *Id.* at ¶ 11.

properly compensatory. Ultimately, just as AT&T and WorldCom exercised their right not to agree to pay higher termination rates, PLDT exercised its right not to continue to accept direct traffic from carriers who will not agree to appropriate rates for PLDT's services.[26]

Subsequently, in a further effort at conciliation, PLDT proposed to both AT&T and WorldCom that PLDT would agree to enter into a 60-day interim arrangement at a termination rate of $0.12 per minute, and, in the event it is later agreed that a lower rate should apply, PLDT would reimburse them for any overpayment.[27] Although this arrangement would have prevented any possible harm to AT&T and WorldCom in terms of both the rates they must pay and the interruption of service resulting from their failure to enter into an agreement with PLDT, both carriers immediately rejected PLDT's proposal, making it clear that what they seek is not restoration of full access to the Philippines, but capitulation by PLDT as to its rates.[28] Indeed, AT&T responded by suggesting an interim rate of <u>6.5 cents/minute</u>, even less than the rates it here insists be restored, and about half the rate PLDT charges to other carriers.[29] Such an offer is inconsistent with good faith negotiation.

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[26] *Id.*

[27] *Id.* at ¶ 14, Exs. 14-15.

[28] *Id.*

[29] *Id.* at ¶ 15, Ex. 16.

D. The Philippine NTC Has Not Ordered PLDT to Keep Its Circuits Open to AT&T and WorldCom, as AT&T Claims.

AT&T mischaracterizes the actions taken by the Philippine NTC, citing only a January 31, 2003 NTC Order requesting that PLDT "maintain the status quo of the existing circuits and termination rates."[30] As AT&T surely knows, however, that Order was superseded by a second NTC Order, dated February 7, 2003, which clearly states that the NTC "hereby AMENDS its Order dated 31 January 2003."[31] AT&T's Petition refers only to the first Order, and fails to properly notify the Commission of the second, enabling AT&T to mount a completely specious argument that PLDT is in violation of Philippine law by raising its rates.[32]

In its February 7 Order, the NTC directed PLDT and other similarly situated entities to take one of two different courses of action, depending upon the counterparty. If PLDT had "existing and effective agreements with foreign telecommunication carriers relative to termination rates," it should "comply with the terms thereof, <u>specifically in maintaining the flow of traffic in and between circuits</u> covered by such agreements."[33] If, however, the counterparty and PLDT were "without existing and effective agreements relative to termination rates," then PLDT is "encouraged . . . to negotiate and

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[30] AT&T Pet. at 5.

[31] Obias Decl. at ¶ 13, Ex. 12 (NTC Memorandum Order, dated February 7, 2003, at 2 (original emphasis)).

[32] AT&T Pet. at 5. Although AT&T filed its Petition on February 7, because Philippines time is 13 hours ahead of EST in the United States, AT&T had ample time to correct its statements regarding the NTC's position. Indeed, AT&T acknowledged receipt <u>on February 7</u> of the NTC's February 7 Order, in a letter addressed to Mr. Obias of PLDT. Obias Decl. at ¶ 13, Ex. 13. In any event, AT&T has had plenty of time to correct the record since then, but has yet to do so.

[33] Obias Decl. at ¶ 13, Ex. 12 (NTC Memorandum Order, dated February 7, 2003, at 2 (emphasis added)).

conclude agreements" with the counterparty, and "the parties may agree on provisional/interim arrangements for continuity of service."[34] As to this second group of counterparties, the NTC did not direct PLDT to maintain "the flow of traffic in and between circuits."[35]

The NTC issued its February 7 Order after reviewing PLDT's letter to it explaining that PLDT did not have any operative termination rates with AT&T and WorldCom.[36] Thus the NTC clearly intended for PLDT's relationship with AT&T and WorldCom to be governed by the second course of action directed in its February 7 Order, namely that further negotiations are "encouraged" and that "the parties may agree on provisional/interim arrangements for continuity of service."[37]

The NTC modified its January 31 Order after going beyond the one-sided information that AT&T and WorldCom had provided to the International Bureau,[38] and having reviewed the

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[34] *Id.* (emphasis added).

[35] *Id.*

[36] Obias Decl. at ¶ 13, Ex. 12 (NTC Memorandum Order, dated February 7, 2003, at 1 (stating that "the Commission is informed that as of this date, you have arrived at a number of bilateral agreements/arrangements for the increase in termination rates, with operating foreign administrations. While two, three or four administrations have not agreed on the increased termination rates, negotiations are on-going.")).

[37] Obias Decl. at ¶ 13, Ex. 12 (NTC Memorandum Order, dated February 7, 2003, at 2 (emphasis added)).

[38] Letter from Donald Abelson of the International Bureau to Commissioner Borje of the NTC (Jan. 31, 2003). That letter was issued based upon allegations made to the Commission, but to which PLDT was given no opportunity to respond. Obias Decl. at ¶ 12. Indeed, other than the subsequently-filed Petitions (which were not even served on PLDT by AT&T or WorldCom), there is not a full public record as to what the Commission may have been told regarding the allegations. This manner of proceeding *ex parte* and on insufficient notice, with insufficient time to respond, has denied PLDT any semblance of due process in this matter; the Commission has been encouraged to prejudge this case and take action without giving PLDT any adequate opportunity to respond. Even now, the Commission affords PLDT only a scant eleven days in which to respond to the extensive charges of AT&T and WorldCom in the face of threats of retaliatory action
(continued ...)

information provided by both AT&T/WorldCom and PLDT. As set forth above, PLDT has already offered them an interim agreement so that direct circuits may remain open for everyone, and fully intends to abide by the NTC's Order to negotiate with AT&T and WorldCom.[39] Unfortunately, neither PLDT nor the NTC can compel AT&T and WorldCom to abandon their pressure tactics and come to the bargaining table.

III. ARGUMENT

A. The Commission's Inquiry into This Matter Should Start and End with a Determination That PLDT's Termination Rates Are 37% Below the Commission's Fully-Implemented Benchmark Standards.

Although the Commission does not claim, and does not have, the authority or jurisdiction to control the rates at which foreign carriers make their settlements with U.S. carriers, in certain circumstances it has exercised its authority over U.S. carriers to prevent them from entering into settlement agreements with foreign carriers at unjust and unreasonable rates.[40] On this basis, the Commission has established benchmark rates for foreign carriers, depending upon the economic

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(... continued)

made by the Commission itself in its letter to the NTC. (A one-day extension was granted following a snowstorm that paralyzed Washington for several days, impeding PLDT's ability to respond.) AT&T and WorldCom have clearly adopted the tactic of pushing for a fast resolution on an inadequate record that unduly favors them because they have written it; that tactic improperly burdens both the Commission and PLDT and invites serious error by the Commission in resolving the petitioners' charges.

[39] Contrary to AT&T's claim, PLDT did not "ignore[]" the NTC's January 31 *ex parte* Order. Rather, that Order was received late on a Friday afternoon, and PLDT responded on the very next business day. Obias Decl. at ¶ 12, Ex. 11.

[40] *See Benchmarks Decision*, 12 FCC Rcd at 19935.

conditions of their country. If foreign carriers insist upon termination rates above these benchmarks, and U.S. carriers so agree to such higher rates, the Commission has stated that it will take enforcement action.[41] But there is absolutely nothing in the Commission's *Benchmarks* or other decisions to suggest the Commission requires termination rates to go below the benchmarks, much less 37% below, or to suggest that the Commission could or would take enforcement action to further such a goal. Rather, the Commission has concluded that it regards rates at or below these benchmarks as "presumptively just and reasonable."[42]

Contrary to the assertions of AT&T, the Commission's settlements policies do not require that foreign carriers whose rates meet the Commission's benchmark test further justify their termination rates to the United States FCC on some cost accounting basis.[43] Indeed, in its *Benchmarks Decision*, the Commission recognized that the cost of terminating a circuit is not the only factor that should be considered, especially in lower and middle income countries where foreign carrier settlement charges may be crucial to support continued development of in-country telecommunications infrastructure.[44] Further, the Commission more-generally eschewed the notion that it had the ability to make precise cost-rate determinations by individual country and, instead, established rates by general category of a

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[41] *Id.* at 19893.

[42] *Id.* at 19939.

[43] That said, PLDT believes that its rates are justified by its costs. The termination rate specified by PLDT falls well within, indeed is substantially below, the rate that would be justified under its Cost Manual, as filed annually by PLDT with the NTC. Obias Decl. at ¶ 15.

[44] *See Benchmarks Decision*, 12 FCC Rcd at 19857.

country's economic development, rates which were, in the Commission's view, substantially higher than pure at cost rates, but nevertheless substantially lower than settlement charges then being imposed.[45]

None of the cases cited by AT&T or WorldCom supports the notion that Commission action can or should be taken to force termination rates to be established at rates below the benchmarks to some required-to-be-demonstrated "cost" level. To the contrary, in the lead case cited by AT&T on this point—*Sprint Communications Company*—the Bureau approved and "reiterate[d] the finding" of a prior decision that the foreign carrier's agreement to reduce its rates to the benchmark rate was in the public interest, despite the Commission's conclusion that the benchmark rate was far above cost.[46] It was only the U.S. carrier's willingness also to agree to the foreign carrier's above-benchmark interim rates that was disapproved.[47]

It would, in fact, turn the entire benchmarks approach taken by the Commission on its head for the Commission suddenly to decide that rates at, or in this case, substantially below the Commission's own benchmarks, are subject to challenge and that foreign carriers must justify to a U.S. regulatory body that its rates satisfy some other unstated cost formula, else to risk having the Commission order U.S. carriers not to honor validly entered contracts at such rates. Such an approach would require the Commission to attempt to act as a super-national rate-making body, to which all foreign carriers

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[45] *Id.* at 19865-66. As noted, *supra* at footnote 5, the rates in question here fall below even the benckmarks set for the most highly developed economic nations.

[46] *Sprint Communications Company,* 13 FCC Rcd 24998, 25004 (IB 1998),

[47] *Id.*

would have to make a rate case showing to justify their charges.[48] That is not what the Commission's cases and policies contemplate, nor what the courts, in approving the Commission's benchmarks policy, have approved to be within the ambit of its jurisdiction.[49]

B. That the Philippines Has Been Found to Meet the Commission's ISR Standards, and by the Petitioners' Own Pleadings, Not to Be Subject to the Commission's ISP at All, Further Undermines Any Possible Whipsaw Claim.

AT&T concedes that because the Philippines is eligible, under U.S. policy, for ISR arrangements, issues " 'of nondiscriminatory accounting rates, equal division of accounting rates, or proportionate rate of inbound traffic' " do not apply.[50] AT&T then claims, without citation, that this does not mean that the Commission's whipsaw policies do not apply in such markets.[51] But that assertion makes no sense because the Commission's whipsaw policies have been developed and

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[48] Such a practice would, among other things, raise WTO issues, because it would put the Commission in the role effectively of placing greater regulatory restriction and oversight on foreign carriers and their termination charges than it does on domestic carriers and their termination charges

[49] *See Cable & Wireless v. FCC*, 166 F.3d 1224, 1229-30 (D.C. Cir. 1999). The Circuit Court's decision further emphasizes the extent of the Commission's rulemaking process, in defending attacks on the Commission's benchmarks determination. *Id.* at 1232-34. Having established benchmarks which the Commission itself emphasized to be clear markers for foreign carriers to understand what rates would be considered unlawful, there is no basis for the Commission to depart from these benchmarks without a further rulemaking proceeding, giving a full and fair opportunity for all interested parties to present evidence and comment. *See International Settlement Rates*, 14 FCC Rcd 9256, 9262-63 (1999)

[50] AT&T Pet. at 9, citing *ISP Reform Order*, 14 FCC Rcd at 7968.

[51] AT&T Pet. at 9.

enforced precisely to prevent such discrimination from being used to favor, and thus offset, one U.S. carrier against another.[52]

Further, here, the very low termination rates that have been established in the Philippines establish that the standard has been met for the elimination of application of the ISP in entirety in this market. The drastic reduction in termination rates to a level that is 37% below the benchmark already establishes, under clear and unequivocal Commission policy, that the Philippine market is competitive and that, as a competitive market, the public interest is better served without the implementation of ISP policies that are not only "unnecessary," but can "actually inhibit competition in the U.S. international services market."[53]

The Commission's policies against whipsawing are tied directly to the ISP.[54] Accordingly, in markets where the ISP ceases to be applicable, there is no basis for a whipsaw claim. Indeed, AT&T lobbied against the standard adopted by the Commission for removal of the ISP, claiming that retention of the ISP was necessary to guard against "whipsawing." The Commission expressly rejected this claim, finding that "these more restrictive standards would maintain the ISP under

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[52] *See ISP Reform Order,* 14 FCC Rcd at 7966-67 (specifying the same three considerations, which AT&T concedes do not apply, as exactly what the ISP requires to prevent whipsawing).

[53] *Id.* at 7970.

[54] *Id.* at 7966.

circumstances in which competitive pressures constrain foreign carrier's market power and in which the potential harm to consumers is slight or nonexistent."[55]

Moreover, in rejecting calls by AT&T to require additional showings of cost-based rates by foreign carriers before the ISP would be removed, the Commission emphasized its preference for a clear, bright line standard to establish the point where termination rates and practices should be left to the market to establish and not to Commission regulation.[56] As WorldCom argued to the Commission in persuading it to adopt its proposed standard, doing so will establish "a simple bright line test that U.S. and foreign carriers can easily understand and apply. *Application of the test [does] not require Commission or other parties to examine the relevant foreign market.*"[57]

As reflected already in the Philippine market, competitive pressures can and do force rates below Commission benchmarks and even lower than the 25% below benchmarks standard established by the Commission for elimination of the application of the ISP in its entirety. But leaving rates and practices to the market is not, as AT&T and WorldCom would have it, any guarantee of one-way ratchet, where rates can only come down, and where U.S. carriers are free to seek Commission redress to prevent any rise in previously reduced rates, particularly when the rise in rates still falls so far below the Commission's benchmarks. What AT&T and WorldCom advocate is not a free market,

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[55] *Id.* at 7985 (emphasis added).

[56] *Id.* at 7978 (standards designed to "enable[] carriers 'to establish quickly and accurately what international transactions, services, and practices are permissible.'") (citation omitted).

[57] WorldCom Letter at 2 (emphasis added).

nor a fair one.[58] In the long run, for the Commission to adopt AT&T and WorldCom's stance would create a perverse incentive among foreign carriers not to reduce termination rates, for fear that the FCC would step in to seek to prevent any future increase.

C. PLDT Has Not Engaged in Whipsawing.

AT&T and WorldCom not only stretch the definition of "whipsawing," they take it to the point of absurdity. As the authorities cited by Petitioners make clear, whipsawing can occur only in markets that are "non-competitive," and where the "foreign monopoly" carrier can impose a termination rate by pitting competing U.S. carriers against one another,[59] and the U.S. carrier has "no alternative means of terminating international traffic."[60]

These conditions simply do not exist in the Philippines. As shown *supra* at 5-6, applying the Commission's own ISR standards, the Philippines is a competitive market, and PLDT does not have

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[58] That changing market conditions can cause previously reduced rates to go back up is reflected in the recent decisions of both AT&T and WorldCom to raise their U.S. long distance rates. These rate increases reportedly including some increases in charges of over 4 cents per minute, and rate increases for some calls of 10, 20, and 30 percent. *See The Washington Post*, Financial E-1 (January 1, 2003). Describing its reasons for the rate increase, an AT&T spokesperson stated:

> "'It's a competitive landscape, and in order to invest in upgrades and remain competitive, sometimes it's necessary to raise basic rates.'"

Apparently, AT&T does not believe such needs extend outside of its own realm. Further, it would appear that AT&T and WorldCom see no issue with asking the FCC to take draconian measures to pressure a foreign carrier to reduce its rates, even when already below the FCC's own benchmarks, while at the same time acting, apparently in concert, to raise their own domestic long distance rates.

[59] *Cable & Wireless P.L.C.*, 166 F.3d at 1227.

[60] *ISP Reform Order*, 14 FCC Rcd at 7966.

the ability to maintain artificially high, non-competitive rates. If it did, it certainly would not have agreed to a termination rate with several U.S. carriers (and dozens of non-U.S. carriers) that is 37 percent below the benchmark rate. As the Commission recognizes, "[u]nless a dominant carrier were subject to competitive pressures . . . it would have little incentive to reduce its rates substantially below the benchmark levels."[61]

AT&T and WorldCom ignore this most recent and pertinent authority, and instead cite the *Telintar* Order[62] as their sole support for the drastic remedy they seek of an injunction that would effectively grant them – based on a two week briefing schedule – all the relief they could hope to obtain at the end of a full hearing on the merits. *Telintar* does not support the granting of the relief sought, however.

First, in *Telintar*, the rate at issue was "substantially above the settlement rate benchmark for Argentina of $0.39-$0.78 ($0.78--$1.20 accounting rate) in effect at the time."[63] In contrast, the termination rate sought by PLDT, and agreed to by several U.S. carriers, is only $0.12 per minute, far below the benchmark rate of $0.19.

Second, Telintar was truly a "monopoly" carrier at the time of the Order and the Telintar/AT&T arrangement was governed by the ISP. In contrast, PLDT is not a monopolist, but

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[61] *Id.* at 7983.

[62] *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service to Argentina*, 14 FCC 8306 (1999) ("*Telintar*").

[63] *Telintar*, 14 FCC Rcd at 8311.

instead is subject to competitive forces, as shown by (a) PLDT's loss of market share to new facilities-based entrants, (b) the 86% drop over the past 10 years in the termination rate charged to U.S. carriers and the fact the rate is now well below the benchmark rate, and (c) the fact that the Philippines meets the stringent standard for complete removal of the ISP.

Third, Telintar disrupted AT&T's international service at a time when an interim accounting rate agreement was in place between Telintar and AT&T. Indeed, a mere week after the two carriers had agreed to an accounting rate extension, Telintar began disrupting service and reneging on its agreement, in what the Commission found to be an effort to punish AT&T for seeking a reduction in rates.[64] In contrast, there is no accounting rate agreement in place between PLDT and either AT&T or WorldCom nor effort by PLDT to punish either carrier. PLDT's interim termination agreements with these carriers had expired by February 1, 2003, and both AT&T and WorldCom have refused to enter into an extended interim arrangement at the $0.12 per minute termination rate agreed to by dozens of other carriers, U.S. and foreign, despite the fact that PLDT has offered to reimburse AT&T and WorldCom for any overpayment in the event a lower rate is negotiated.[65] To the extent those carriers do not have direct service, it is a choice of their own making, based entirely on their refusal to pay the charges that others have agreed to.

Finally, and perhaps of greatest importance, even in *Telintar* the ultimate remedy imposed by the FCC was to effectively require the foreign carrier to offer AT&T the lowest termination rates

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[64] *Id.* at 8308

[65] Obias Decl. at ¶¶ 6,10,14.

which that carrier made available to other U.S. carriers, which is exactly what PLDT has been offering AT&T and WorldCom all along. It is AT&T and WorldCom that refuse such equivalent treatment and instead insist upon rates lower than those paid by any other U.S. carrier.[66] In *Telintar*, the Commission rejected AT&T's request for a waiver of the Commission's ISP to extend AT&T's previously authorized rate, on the grounds that it would be discriminatory. The rate AT&T and WorldCom have demanded is likewise discriminatory; as in *Telintar*, the rate charged others – here $0.12 per minute – should prevail.

In sum, the *Telintar* Order dealt with a monopolist foreign carrier that was using its market power to prevent its termination rates from dropping to levels that were somewhat closer to the benchmark rate, thereby frustrating the Commission's ISP policy. In contrast, PLDT has negotiated, in a competitive environment, a four cent per minute increase in its termination rate with U.S. and other carriers, to a level that is still well below the benchmark level, and is now being coerced by the two most powerful U.S. carriers to reverse those agreements.

D. PLDT Has Not Offered Its Affiliate Any Special Concessions.

WorldCom's contention that PLDT has offered its affiliate, PLDT US, "special concessions" by continuing service to the affiliate while service to WorldCom and AT&T has been interrupted is nonsense. PDLT has not offered its affiliate or any other U.S. carrier any more favorable rates or conditions than those it has offered to WorldCom or AT&T. The difference is only that WorldCom and AT&T have steadfastly refused to accept such rates. If PDLT were to continue to provide

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[66] *Id.* at ¶ 15.

WorldCom and AT&T with access at the rates upon which they insist, the "special concession" would be to WorldCom and AT&T to give them terms that are better than those it makes available to any other carrier.[67]

E. The Commission Should Give Deference to the Decision of the NTC.

In its *Benchmarks Decision*, the Commission stated that where it found foreign termination rates to exceed relevant benchmarks it would contact appropriate foreign governmental agencies to express the Commission's concern and seek their support in lowering termination rates to benchmark levels.[68] Here, despite the fact that the rates are well below the Commission's benchmarks, and without even asking for the position of PLDT, the Commission has already taken this step.

In response, the NTC has issued not one, but two decisions (*see supra* at 10). The decisions together reflect that the NTC is very responsive to the concerns raised by the Commission, but at the same time, having examined all of the relevant facts, has concluded that PLDT's rates are justified. As set forth in Section II.D. above, PLDT is acting in full compliance with the NTC's order. Further, even if its compliance with the NTC order were disputed, the proper forum for resolution of such a dispute would be the NTC and not the FCC.

PLDT respectfully urges the Commission that, particularly where as here the rates in question fall well below the FCC's own benchmarks, the Commission give appropriate deference to the

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[67] PLDT US has also raised its rates to reflect the increase in termination charges plus its own costs. Obias Decl. at ¶ 7. Petitioners' charges that PLDT US may be somehow acting in violation of FCC regulations are unsubstantiated and false. AT&T Pet. at 7; Worldcom Pet. at 16.

[68] *See Benchmarks Decision*, 14 FCC Rcd at 19893.

Philippine administration as to any challenge to settlement charges for terminating traffic in the Philippines. Considerations of comity demand that the decisions of that body, when it comes to matters involving the provision of telecommunications services in the Philippines, Philippine economic conditions, and matters which are clearly governed under Philippine law, be respected. Indeed, AT&T in its own Petition emphasized the importance of the decision of the Philippine regulator.[69] Now that this decision has gone against AT&T, it should hardly be heard to discount the decision as no longer relevant to its claim.

F. Petitioners Will Not Suffer Irreparable Harm if Their Request for Immediate Relief Is Not Granted.

The immediate interim relief requested by Petitioners is neither necessary nor justified. As AT&T concedes, when considering a request for interim relief, the Commission evaluates the following four criteria: 1) the likelihood of success on the merits; 2) the threat of irreparable harm absent the grant of preliminary relief; 3) the degree of injury to other parties if relief is granted; and 4) whether issuing the order will further the public interest.[70] Petitioners have failed to show that any of these criteria has been met.[71]

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[69] AT&T Pet. at 4-5.

[70] *See Virginia Petroleum Jobbers Ass'n* v. *FPC* , 259 F. 2d 921, 925 (D.C. Cir. 1958), as refined in *Metropolitan Area Transit Commission v. Holiday Tours, Inc.,* 559 F. 2d 841, 843 (D.C. Cir. 1977).

[71] Although WorldCom, unlike AT&T, does not label its petition as an "emergency petition" and does not expressly seek "interim" relief, WorldCom nonetheless requests that the Commission "immediately order all U.S. carriers to suspend all payments to PLDT." WorldCom Pet. at 1. WorldCom does not even attempt to provide justification or analysis of the *Virginia Petroleum Jobbers* factors that would support immediate relief.

As to the first factor, for all the reasons described *supra* at 18-21, Petitioners' whipsawing claims are baseless, and Petitioners have failed to show a likelihood of success on the merits.[72] As to the second factor, Petitioners have utterly failed to show any danger of irreparable harm to them if the immediate relief they seek is not granted. When evaluating whether a petitioner has shown irreparable injury, the D.C. Circuit has found that "[t]he key word in this consideration is irreparable," and "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough."[73]

Here, the damages Petitioners claim they are suffering are monetary in nature, and they can not credibly argue that, if they prevail on the merits, they can not be made whole. Indeed, even absent the relief sought by Petitioners, there is no harm to them. PLDT has proposed to both AT&T and WorldCom that PLDT will agree to enter into a 60-day interim arrangement at a termination rate of $0.12 per minute, and in the event it is later agreed that a lower rate should apply, PLDT will

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[72] AT&T's claim that the "likelihood of success" factor alone is sufficient to justify the grant of interim relief is wrong according to the Commission's precedents and it defies simple logic. AT&T Pet. at 14-15; *In the Matter of Implementation of Video Description of Video Programming*, 17 FCC Rcd 6175, 6177 (2002) ("[e]ven if Petitioners had demonstrated a likelihood of success on the merits, the test for a stay requires a balancing of all factors"). If the four *Virginia Petroleum Jobbers* factors were reduced to this one, then every time the Commission determined there was a strong likelihood of success, it would be free to issue injunctive relief without judging whether such immediate relief is necessary to protect the public interest or whether a balancing of the respective harms warrants such a drastic remedy.

[73] *Virginia Petroleum Jobbers Ass'n*, 259 F. 2d at 925; *see also Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (It is "well settled that economic loss does not, in and of itself, constitute irreparable harm."); *Perpetual Bldg Ltd. P'ship v. Dist. of Columbia*, 618 F.Supp. 603, 615 (D.D.C. 1985) ("monetary injuries alone, however substantial, are insufficient to justify preliminary injunctive relief").

reimburse them for any overpayment.[74] This proposal would eliminate any possible harm to Petitioners (let alone irreparable harm), but it has been rejected by both of them.[75]

Moreover, the harm that AT&T claims to be suffering is more imagined than real. Its vague and unsupported assertion that "because of the circuit blockage, AT&T cannot terminate more than a small proportion of calls to the Philippines" should not be credited.[76] As described in Mr. Obias' Declaration, PLDT has seen no material decline in the volume of calls flowing from the United States, thus belying AT&T's claim.[77] This is not surprising, given that AT&T told PLDT months ago during negotiations that it can terminate its traffic without PLDT,[78] and both AT&T and Worldcom apparently are doing so now by using their extensive international networks, and rerouting their calls via other carriers. PLDT understands, in this regard, that AT&T is routing calls through Teleglobe Canada, Reach and Optus Australia, and ITXC, to name a few, while WorldCom is routing calls through Teleglobe Canada, Reach Australia and ITXC.[79] In any event, given the offer made by PLDT to open its direct circuits to both AT&T and WorldCom,[80] it is they who are choosing to have

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[74] Obias Decl. at ¶ 14, Exs. 14-15.

[75] *Id.* at ¶ 14.

[76] AT&T Pet. at 13.

[77] Obias Decl. at ¶ 16.

[78] *Id.* at ¶ 3.

[79] *Id.* at ¶ 17.

[80] *Id.* at ¶ 14.

PLDT's direct service suspended, and any injury is one they can readily avoid without any action from the Commission.

AT&T's unsubstantiated claim that it is "likely" to lose customers, and therefore deserves immediate relief also finds no support in fact or law.[81] AT&T misses the main reason why the Commission in *AT&T Corp. v. Ameritech Corp.* referred to the loss of customers as influencing its finding of irreparable harm.[82] In that case, Ameritech was seeking to sign new customers to a unique program that would combine local and long distance services on one single bill.[83] Thus if an injunction were not granted, Ameritech would be able to proceed with signing up new customers, making it "virtually impossible to 'unscramble' the effects of the agreement and return to the current status quo."[84] The Commission held that an injunction is "warranted where the circumstances are such that it would be impracticable to 'withdraw [] service, once established, because of its disruptive effect,'" and that "[o]nce a customer is receiving service under the terms of the Ameritech-Qwest agreement, it would be similarly impracticable to require that customer to switch carriers in the event the agreement is found to be illegal."[85]

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[81] AT&T Pet. at 15.

[82] 13 FCC Rcd 14508, 14521 (1998).

[83] *Id.* at 14510.

[84] *Id.* at 14520.

[85] *Id.* (quoting *Midwest Television, Inc.*, 4 F.C.C.2d 612 (1966)).

In this case, PLDT has already proposed a simple way to ensure that the status quo remains. Furthermore, Petitioners are already rerouting their traffic, so that no customers are actually lost, and they can continue to do so. Under no circumstances would a U.S. customer need to revoke an existing agreement and switch carriers. Thus, this case is fundamentally different from *AT&T Corp. v. Ameritech Corp.*, where AT&T lost entire customer relationships due to a competitor being allowed to establish a program that was uniquely different from anything already offered in the marketplace.

Petitioners have also failed to show that issuing the interim relief will not disproportionately and significantly harm PLDT. Dozens of other international carriers have already agreed to the new rates set by PLDT, and if the requested interim relief were granted, these other carriers may well contest the application of the new rates, withhold their payments to PLDT, and throw PLDT's business into turmoil.[86] Having reached agreements with dozens of carriers on new termination rates, granting the requested relief would improperly intrude upon and disrupt the legitimate agreements that have already been made. As already shown, PLDT has legitimate need for additional revenues and would be harmed by their loss. Thus, granting Petitioners' requested interim relief would cause a disproportionate degree of harm to PLDT. And even if the other carriers honored their contracts with PLDT at the new rate level, those other carriers would suffer competitive disadvantages *vis á vis* AT&T and WorldCom if those two carriers received a preferential rate by virtue of the FCC's actions.

Petitioners also utterly fail to show that their requested relief is necessary to protect the public interest. Although AT&T states in conclusory fashion that it "expects that most of its customers' calls

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[86] Obias Decl. at ¶ 18.

to these carriers' networks will continue to fail to go through until circuits are restored,"[87] it provides no support for this assertion. In fact, as noted, PLDT has discerned no material drop in the volume of traffic coming from the United States.[88] The public interest would be best served by denying Petitioners' request for immediate relief and admonishing the parties to negotiate and conclude agreements that promote the national welfare, exactly as did the Philippine NTC.[89] PLDT has shown its willingness to do so in an honest and fair manner, and if Petitioners did likewise, a mutually satisfactory resolution could certainly be reached.

Finally, Petitioners' claim for immediate relief is barred by the doctrine of laches. Petitioners were put on notice as early as May 2002 that PLDT intended to raise its termination rate to $0.12 per minute, (*see supra* at 7), and thus they cannot now complain that they need "emergency" or "immediate" relief when they have sat on their rights for such a long period of time.

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[87] AT&T Pet. at 13.

[88] Obias Decl. at ¶ 16.

[89] Obias Decl. at ¶ 13, Ex.12 (NTC Memorandum Order, dated February 7, 2003).

IV. CONCLUSION

AT&T and WorldCom have failed to establish any basis for the extraordinary relief that each has requested. For all the foregoing reasons, AT&T's and WorldCom's Petitions should be denied.

Respectfully submitted,

PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY

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Dated: February 21, 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 03-38
Philippine Long Distance Telephone Company	)	
Globe Telecom, Inc.	)	
	)	
AT&T Emergency Petition for Settlement Stop Payment Order and Request for Immediate Interim Relief	)	
	)	
Petition of WorldCom, Inc., for Prevention of "Whipsawing" on the U.S.–Philippines Route	)	

DECLARATION OF RAMON ALGER P. OBIAS

1. My name is Ramon Alger P. Obias. I am Vice President of International Business for the Philippine Long Distance Telephone Company ("PLDT"). In this position, I am responsible for the negotiation of PLDT's various traffic termination arrangements with foreign carriers around the world, including U.S. carriers. More specifically, I have direct responsibility for PLDT's ongoing efforts to negotiate termination rates with both AT&T and Worldcom.

2. PLDT initiated talks with each of AT&T and WorldCom in May 2002, notifying each of them that PLDT intended to adjust its termination rates upward, and new rates would take effect on August 1, 2002. Notification was given in writing to AT&T, *see* Ex. 1, and orally to WorldCom during our bilateral meeting on May 21, 2002 in Washington, D.C. During the course of negotiations, AT&T and

Worldcom each refused any rate increase. PLDT agreed to continue to provide service to AT&T and Worldcom at the then current termination rate of approximately $0.08 per minute until the third quarter of 2002 while negotiations continued, and later agreed to extend that rate into the fourth quarter.

3. Throughout the fourth quarter of 2002, PLDT continued its negotiations with both AT&T and Worldcom. On October 11, 2002, representatives from AT&T advised me during our bilateral meeting that if AT&T was not given a termination rate lower than $0.08 per minute, AT&T would shift traffic bound for the Philippines away from PLDT. AT&T has in the past used this tactic of shifting traffic away from PLDT to gain leverage during rate negotiations. PLDT agreed to extend the then current termination rate of approximately $0.08 per minute through the end of 2002.

4. Upon the expiration of the termination rate agreements with AT&T and Worldcom on December 31, 2002, PLDT once again agreed to extend the termination rate of approximately $0.08 per minute -- this time through the month of January 2003 -- so that negotiations and service could continue without interruption.

5. Throughout 2002, PLDT also engaged in negotiations with the other U.S. telecommunications carriers. Several customers requested that PLDT delay implementing the rate increase in order to give them time to inform their customers of the increase and adjust their contracts accordingly. PLDT acceded

to these requests and instead of implementing the new rates in the third quarter of 2002, PLDT ultimately agreed to delay implementation until February 1, 2003.

6. To date, PLDT has entered into new termination arrangements with dozens of telecommunications carriers worldwide, effective February 1, 2003, at a new termination rate of $0.12 per minute or higher. Several of these carriers are U.S. companies, and these carriers are currently passing traffic to PLDT at the new rate.

7. PLDT's U.S. subsidiary, PLDT (US) Ltd., has agreed to pay PLDT the same $0.12 per minute termination rate that PLDT has requested of AT&T and WorldCom. In compliance with FCC regulations, PLDT (US) Ltd. charges its customers rates that cover PLDT's termination charge and PLDT (US) Ltd.'s other costs of service.

8. On December 13, 2002, PLDT notified both AT&T and Worldcom that PLDT's termination rates would be increased as of February 1, 2003. *See* Exs. 2 and 3. AT&T and WorldCom, however, have continued to refuse to agree to a rate increase. During PLDT's January 2003 negotiations, at no time did either AT&T or Worldcom agree to a termination rate of more than $.08 per minute. Further, each company advised PLDT that if PLDT raised its rates it would not pay the difference between the new and old rates. Given this position, and after months of futile negotiations, on January 9, 2003, PLDT notified both AT&T and WorldCom that PLDT would no longer be able to continue to provide direct service at the $0.08 per minute termination rate after February 1, 2003, and that

PLDT would leave it to the discretion of AT&T and WorldCom as to how to route their traffic to the Philippines, as they earlier said they would do. *See* Exs. 4 and 5.

9. Both AT&T and Worldcom rejected PLDT's January 9, 2003 proposal, insisting that the termination rate continue at $0.08 per minute until another arrangement could be reached. On January 30, 2003, PLDT sent a notice of its intent to suspend the direct traffic of AT&T and WorldCom to PLDT, as of February 1, 2003, until the parties reached an agreement on the termination rates. *See* Exs. 6 and 7. PLDT took this action with the awareness that AT&T and WorldCom had told PLDT they had other means by which to direct their traffic to the Philippines.

10. Even after giving notice, PLDT made one more effort to avoid suspension of direct traffic from AT&T and Worldcom, by proposing an interim arrangement, through the end of February, whereby AT&T and WorldCom would pay PLDT's new $0.12 per minute termination rate pending a final agreement on rates and service among the parties. *See* Exs. 8 and 9. AT&T and WorldCom rejected this offer too, leaving PLDT no choice but to begin suspending the direct traffic of AT&T and WorldCom to PLDT, on February 1, 2003.

11. Contrary to AT&T and WorldCom's characterizations, PLDT's decision to suspend AT&T's and WorldCom's traffic was not made to "punish" them. Rather, it reflects the fact that after months and months of negotiations, and after numerous extensions by PLDT of the $0.08 per minute rate and a reasonable offer

of compromise, AT&T and WorldCom continued to stonewall, refusing any increase in PLDT's rates whatsoever. PLDT could simply not continue rates that it did not believe to be properly compensatory, and AT&T and WorldCom did not agree to PLDT's rates. Thus, PLDT exercised its right not to accept direct traffic from these carriers.

12. On January 31, 2003, the Federal Communications Commission (the "FCC") contacted the Philippines National Telecommunications Commission (the "NTC"), requesting its help with this matter, without having first heard PLDT's views. *See* Ex. 10. Later that same day, acting on the information it received from the FCC, the NTC issued an order to PLDT as well as other Philippines carriers, requesting that PLDT "maintain the status quo of the existing circuits and termination rates." On the following business day, February 3, 2003, PLDT responded to the NTC's order, explaining the reasons for its actions. *See* Ex. 11.

13. After considering the material submitted by PLDT and other Philippine carriers, the NTC issued a revised order on February 7, 2003, substantially amending its January 31, 2003 order. *See* Ex. 12. The NTC directed PLDT and other similarly situated entities to take one of two different courses of action, depending upon the counterparty. If PLDT had "existing and effective agreements with foreign telecommunication carriers relative to termination rates," it should "comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits covered by such agreements." *See* Ex. 12. To the extent PLDT and the counterparty are "without existing and effective agreements relative to

termination rates" – as is the case with AT&T and Worldcom – the NTC stated that the parties are "encouraged . . . to negotiate and conclude agreements," and that "the parties may agree on provisional/interim arrangements for continuity of service." *See* Ex. 12 (emphasis added). In a letter to PLDT from AT&T, dated February 7, 2003, AT&T acknowledged receipt of the NTC amended order of February 7, 2003. *See* Ex 13.

14. On February 13, 2003, pursuant to the amended order from the NTC issued on February 7, 2003, PLDT made yet another offer to AT&T and Worldcom. *See* Exs. 14 and 15. PLDT proposed a 60-day interim arrangement whereby it would provide services at the $0.12 per minute termination rate until a final agreement was reached between the parties. The proposed arrangement provided that, if the final agreed termination rate was below $0.12 per minute, PLDT would reimburse AT&T and Worldcom for any amount they overpaid during the interim arrangement. To the extent AT&T and Worldcom had underpaid during the interim arrangement, each would remit payment to PLDT in the amount of the underpayment. AT&T and Worldcom rejected this offer, which would have protected them from any harm from overpayment.

15. On February 14, 2003, in response to PLDT's February 13, 2003 offer, AT&T made a counteroffer, proposing an interim arrangement whereby PLDT would provide services to AT&T at $0.065 per minute – 1.5 cents below the former rate -- until a final agreement could be reached. *See* Ex. 16. This proposal is only slightly more than half of the rate being charged to other carriers, including U.S.

carriers who have entered into agreements with PLDT at the $0.12 per minute rate. It is also below PLDT's costs of service. In fact, the $0.12 per minute termination rate specified by PLDT falls well within, indeed is substantially below, the rate that would be justified under its Cost Manual, as filed annually by PLDT with the NTC. Acceding to AT&T's demand of $0.065 per minute would give AT&T a significant advantage over the other U.S. carriers that have already agreed to the new settlement rate of $0.12 per minute. Instead of seeking equal treatment, AT&T insists upon a rate lower than that paid by the U.S. and other carriers.

16. Since suspending the direct traffic of AT&T and Worldcom on February 1, 2003, PLDT has discerned no material drop in the volume of traffic coming from the United States. Thus, I do not believe there is merit to AT&T's and WorldCom's contention that a material amount of their calls to the Philippines cannot be terminated. This understanding is consistent with AT&T's statement to me during our negotiations that it has alternative means to direct traffic to the Philippines, as it has done in the past. Indeed, both AT&T and Worldcom have extensive international networks through which to feed traffic to the Philippines.

17. Since the suspension of direct termination services by PLDT, my understanding, based on information provided by PLDT's Revenue Assurance Group, is that AT&T is routing calls to the Philippines through Teleglobe Canada, Reach and Optus Australia, and ITXC, among others. Similarly, my understanding is that WorldCom is routing calls to the Philippines through Teleglobe Canada, Reach

Australia, and ITXC, among others. This understanding is consistent with AT&T's earlier statement to PLDT that it had other means of terminating its traffic in the Philippines.

18. If the FCC were to grant the relief requested by AT&T and WorldCom, it would throw PLDT's business into turmoil. PLDT would be denied revenue for its services and the numerous settlement agreements that it has already entered into with other carriers would be put into jeopardy.

19. PLDT's entry into various interconnection agreements with other domestic carriers occurred after PLDT decided to raise its international termination charges. PLDT is required under Philippines law to enter into such interconnection agreements with other domestic carriers. These agreements with other domestic carriers had no bearing on PLDT's decision to propose new termination rates.

20. The Philippines telecommunications market has become increasingly competitive over the past several years. Since 1993, eleven (11) facilities-based carriers have entered the Philippines market, taking substantial share from PLDT. Since 1999, the termination rates paid by AT&T and Worldcom to PLDT have gone from $0.36 per minute to $0.08, a 75 percent drop, and including the current rate increase to $0.12 per minute, PLDT's rates have dropped 67 percent. In addition, since 1993, PLDT's rates with U.S. carriers has dropped by 86 percent.

21. For several years now, AT&T and WorldCom have used their own substantial market share and ability to bypass PLDT's facilities to pressure PLDT to drop its

termination rates. The drop in rates was intended to be made up, at least in part, by promises of increased traffic, but that never occurred. Moreover, in addition to losing market share to competitors, PLDT has suffered losses in foreign carrier revenue of approximately U.S. $44.8 million from 1997 to 2001, due to bankruptcies and fraud. This has denied PLDT important revenues needed to improve telecommunications infrastructure within the Philippines.

22. Pursuant to 28 USC §1746, I, Ramon Alger P. Obias, declare under penalty or perjury under the laws of the United States of America that the foregoing is true and correct.

By: ______________________
Ramon Alger P. Obias
Vice President,
International Business

Dated: February 21, 2003

EXHIBIT 1

A2a

PLDT

FACSIMILE MESSAGE

May 15, 2002

To : **Mr. Rom Carlos**
Managing Director-Philippines
AT&T-US
Fax No: 816 2242

From : **PLDT Manila**
Fax No.: 812 2697

Subject : ***TERMINATION ARRANGEMENT: PLDT-AT&T***

Our Ref. : PLDT Fax 0502/0055/CRD1/GCS

With reference to our series of discussions and meetings on the above subject, we would like to provide you our final offer covering the period June 1 to July 31, 2002:

AT&T to PLDT: (Paid traffic only)

Traffic Type	Prepaid Rate per Minute	Volume Threshold
Tier 1 On-net Fix	US$ 0.078	First 15.0 Million minute (Guaranteed)
Tier 2 On-net Fix	US$ 0.075	Above 15.0 Million minute
Off-net Fix	US$ 0.115	From First minute
Tier 1 On-net CMTS (SPA)	US$ 0.125	First 6.0 Million minute (Guaranteed)
Tier 2 On-net CMTS (SPA)	US$ 0.12	Above 6.0 Million minute
Off-net CMTS (GIE)	US$ 0.14	From First minute

Terms and Conditions:

1. If the monthly On-net fixed traffic that AT&T sends to PLDT exceeds 15.0 Million minutes, the prepaid rate of US$ 0.075/min will apply back to the first minute.
2. If the monthly On-net CMTS traffic that AT&T sends to PLDT exceeds 6.0 Million minutes the prepaid rate of US$ 0.12/min will apply back to the first minute.
3. AT&T is required to prepay based on the traffic volume forecast that AT&T will provide to PLDT (Prepayment for guaranteed minutes is US$ 1.92 Million plus prepayment for minutes in excess of guaranteed minutes.)
4. For avoidance of doubt, all On-net Fixed and CMTS traffic are prepaid.
5. Should AT&T send more traffic to PLDT than the actual prepaid traffic, settlement "true-up" will be made as follows:
   - for June traffic , by June 24, 2002, in addition to the July 2002 prepayment.
   - for July traffic , by July 29, 2002.
6. Settlement of Off-net Fixed and Mobile traffic will be included in the recap of other traffic types after the exchange of toll settlement statements.

- continue -

Transmitted
5.15.02

PLD

PLDT to AT&T: (Paid traffic only)

Traffic Type	Rate per Minute	Volume Threshold
IDD & OH Paid	US$ 0.035	1.0 Million minute (Guaranteed)

To establish AT&T's monthly prepaid amount, we would appreciate receiving AT&T's Inbound traffic forecast to PLDT's On-net fixed and CMTS (Smart, Piltel and ACES) traffic for the months of June and July 2002 on or before May 27 and June 24, 2002 respectively.

Kindly be advised again that PLDT on-net rates are going to be adjusted upwards starting July 2002 with all other relations. Rates to AT&T will be adjusted beginning August 1, 2002.

On another subject, please kindly advise when AT&T would remit to us payments for outstanding invoices amounting to US$ 12,367,760.

Best regards,

GENARO C. SANCHEZ
Assistant Vice President
International Business Development

/jmd15

EXHIBIT 2

A26

PLDT

FACSIMILE MESSAGE

December 13, 2002

To : **Mr. Mark Miller**
Region Director – Asia/Pacific
AT&T Wholesale
Fax No.: +1 973 644 7089

Mr. Romulo S. Carlos, Jr.
Managing Director
AT&T Wholesale
Fax No.: +63 2 816 2242

From : PLDT Manila
Fax. No.: +63 2 812 2697

Subject : **TERMINATION RATES TO PHILIPPINES FIXED**

Our Reference: PLDT Fax 1202/121/CRD1/AM/ESBA

We would like to inform you that effective 1st February 2003, PLDT will apply the following rates for inbound international traffic terminating to the Philippines via PLDT's international gateway.

On-net Fixed Prepaid	: US$ 0.12 per minute
On-net Fixed Post Paid	: US$ 0.125 per minute
Off-net Fixed Prepaid only	: US$ 0.14 per minute

Thank you for your cooperation and understanding.

Merry Christmas and best wishes for the New Year.

Best regards,

Antonio

EDGARDO S.B. ANTONIO II
Manager
Correspondent Relations 1 Division
Email: esantonio@pldt.com.ph

Transmitted
12/6/02

23

EXHIBIT 3

A2c

PLDT

FACSIMILE MESSAGE

December 13, 2002

To	: **Mr. Mark Dodmann** Director – Asia/Pacific Asia Pacific, MCI WorldCom US Fax No.: +1 914 881 6263	**Mr. Cesar "Bobby" Castro** MCI WorldCom Representative in the Philippines Fax No.: +63 2 810 5374
From	: PLDT Manila Fax. No.: +63 2 812 2697	
Subject	: **TERMINATION RATES TO PHILIPPINES FIXED**	
Our Reference:	PLDT Fax 1202/122/CRD1/AM/ESBA	

We would like to inform you that effective 1st February 2003, PLDT will apply the following rates for inbound international traffic terminating to the Philippines via PLDT's international gateway.

On-net Fixed Prepaid	US$ 0.12 per minute
On-net Fixed Post Paid	US$ 0.125 per minute
Off-net Fixed Prepaid only	US$ 0.14 per minute

Thank you for your cooperation and understanding.

Merry Christmas and best wishes for the New Year.

Best regards,

Antonio

EDGARDO S.B. ANTONIO II
Manager
Correspondent Relations 1 Division
Email: esantonio@pldt.com.ph

12/13/02

EXHIBIT 4

PLDT

FACSIMILE MESSAGE

January 9, 2003

To: **Mr. Rom Carlos**
Managing Director
AT&T Philippines
Fax No.: 816 2242

From: **PLDT Manila**
Fax No.: 812 2697

Subject: **TERMINATION RATES TO PHILIPPINES FIXED**

Ref.: PLDT Fax CRD1.0103/003/m

Dear Rom,

Thank you for your email reply dated January 2, 2003. As you know, since early 2002, PLDT had given advice to, and discussed fully with AT&T, of PLDT's impending rate alignment*. Please note that PLDT's 12 to 14 US cents rate to Philippine mobile has been in effect for more than a year now.

We look forward to your agreement to the new PLDT rates earlier advised and discussed. Should AT&T not agree with PLDT's new rates, we leave it to your discretion as to how your traffic to the Philippines will be routed. However, should said traffic be coursed through PLDT-AT&T direct circuits and overflow routes effective on February 1, 2003 and any date thereafter, PLDT will take this as AT&T's constructive acceptance of the new PLDT rates and rate arrangement being legally binding on both PLDT and AT&T.

Thank you for your kind understanding and cooperation.

Best regards,

Antonio

Edgardo SB. Antonio II
Head – Correspondent Relations 1

**Details as attached*

Ed66/feala

Transmitted

25

PLDT

ATTACHMENT

Rates for inbound international traffic terminating to the Philippines via PLDT's international gateway effective February 1, 2003:

On-net Fixed	Prepaid	US$ 0.12/min
On-net Fixed	Postpaid	US$ 0.125/min
Off-net Fixed	Prepaid only	US$ 0.14/min

Note: Should there be any changes in the access charge and international termination rates to Philippine mobile networks, PLDT will immediately inform you what the corresponding changes will be for mobile traffic coursed through PLDT's gateway once these changes are finalized. However, the (45 or 30 –day) prior written notice requirement may not be met.

EXHIBIT 5

PLDT

FACSIMILE MESSAGE

January 9, 2003

To: **Mr. Mark Dodman**
Director – Asia Pacific
MCIWorldCom IS&C
Fax No.: +1 914 881 6263

Copy: **Mr. Cesar "Bobby" Castro**
Representing MCIWorldCom IS&C in the Philippines
Fax No.: +63 2 810 5374

From: **PLDT Manila**
Fax No.: +63 2 812 2697

Subject: **TERMINATION RATES TO PHILIPPINES FIXED**

Ref.: PLDT Fax CRD1/0103/005/m

Dear Mark,

Thank you for your email reply dated December 14, 2002. As you know, since early 2002, PLDT had given advice to, and discussed fully with MCIWorldCom, of PLDT's impending rate alignment*. Please note that PLDT's 12 to 14 US cents rate to Philippine mobile has been in effect for more than a year now.

We look forward to your agreement to the new PLDT rates earlier advised and discussed. Should MCIWorldCom not agree with PLDT's new rates, we leave it to your discretion as to how your traffic to the Philippines will be routed. However, should said traffic be coursed through PLDT-MCIWorldCom direct circuits and overflow routes effective on February 1, 2003 and any date thereafter, PLDT will take this as MCIWorldCom's constructive acceptance of the new PLDT rates and rate arrangement being legally binding on both PLDT and MCIWorldCom.

Thank you for your kind understanding and cooperation.

Best regards,

Antonio

Edgardo SB. Antonio II
Head – Correspondent Relations I

**Details as attached*

E166-fea2a

General Office P.O. Box 2148 Makati City, Philippines

...mitted

32

PLD 1

PLDT

ATTACHMENT

Rates for inbound international traffic terminating to the Philippines via PLDT's international gateway effective February 1, 2003:

On-net Fixed	Prepaid	US$ 0.12/min
On-net Fixed	Postpaid	US$ 0.125/min
Off-net Fixed	Prepaid only	US$ 0.14/min

Note: Should there be any changes in the access charge and international termination rates to Philippine mobile networks, PLDT will immediately inform you what the corresponding changes will be for mobile traffic coursed through PLDT's gateway once these changes are finalized. However, the (45 or 30 –day) prior written notice requirement may not be met.

33

EXHIBIT 6

PLDT

FACSIMILE MESSAGE

January 30, 2003

To: Mr. Romulo Carlos
Managing Director
AT&T Philippines
Fax No.: 816 2242

From: PLDT Manila
Fax No.: 812 2697

Subject: TERMINATION RATES TO THE PHILIPPINES

Reference: PLDT Fax CRD1.0103.029.f

Dear Rom,

We acknowledge receipt of Mr. Michael Behrens' fax message of January 16, 2003.

PLDT and AT&T's latest agreement with regard to the termination rates provides that the rates stated therein shall apply for the period covering September 1, 2002 until December 31, 2002 (the "Term") and has been verbally extended to January 31, 2003.

Considering that we have proposed new termination rates (our letters dated December 13, 2002, January 9 and 10, 2003) which are to be effective 1 February 2003, and that an agreement with you has not yet been reached on termination rates to the Philippines, PLDT shall be constrained to suspend accepting traffic from AT&T until such an agreement has been reached. We have no alternative but to protect those carriers that have agreed to accept our proposed termination rates.

Thank you very much for your understanding.

Best regards,

Edgardo SB. Antonio II
Head – Correspondent Relations 1 Division

Ed60/fea1 1a

35

EXHIBIT 7

PLDT

FACSIMILE MESSAGE

January 30, 2003

To: **Mr. Gene Spinelli**
Regional Vice President
MCIWorldCom IS&C
Fax No.: +1 914 881 6263

From: **PLDT Manila**
Fax No.: +63 2 812 2697

Subject: **TERMINATION RATES TO THE PHILIPPINES**

Reference: PLDT Fax CRD1.0103/030/f

Dear Gene,

We acknowledge receipt of your fax message of January 15, 2003 addressed to Mr. Zarate, on subject.

PLDT and MCIWorldCom IS&C's latest agreement with regard to the termination rates provides that the rates stated therein shall apply for the period covering October 1, 2002 until December 31, 2002 (the "Term") and has been verbally extended to January 31, 2003.

Considering that we have proposed new termination rates (our letters dated December 13, 2002, January 9 and 10, 2003) which are to be effective 1 February 2003, and that an agreement with you has not yet been reached on termination rates to the Philippines, PLDT shall be constrained to suspend accepting traffic from MCIWorldCom until such an agreement has been reached. We have no alternative but to protect those carriers that have agreed to accept our proposed termination rates.

Thank you very much for your understanding.

Best regards,

Antonio

Edgardo SB. Antonio II
Head - Correspondent Relations 1 Division

Copy: CD Castro Fax No. +63 2 810 5374

Edoc/fea115

EXHIBIT 8

copy for

PLDT

Philippine Long Distance Telephone Company
General Office P.O. Box 2148, Makati City, Philippines

Fax

January 31, 2003

To	: Mr. Gene Scinelli	Worldcom	Fax no. : +1 914 381 6263
Copy	: Mr. Mark Dodman	Worldcom	
	Mr. Cesar D. Castro	Worldcom Manila	+63 2 8105374
From	: PLDT Manila		+63 2 815 3599
Ref.	: PLDT Fax IBD-0103--F GCS		
Subj.	: **NEW TERMINATION RATES TO THE PHILIPPINES**		

Dear Gene,

This has reference to your fax dated January 30, 2003 concerning the above subject. I note your counterproposal and must reiterate to you the position of PLDT:

- The new termination rates to the Philippines, which are the same set of new rates we proposed to all our partners, will come into effect on February 1, 2003 for all relations without exception.
- We are open to further discussions with Worldcom until February 28, 2003 and even beyond. However, to avert disputes in invoices and payments, we have to suspend services with parties who have not accepted the new rates as well as the constructive acceptance arrangement we indicated in our previous letter/s. Such service suspension would take effect from February 1, 2003 until the time an agreement is reached. This is fair to all our partners who have accepted the new rates and will help keep the new rates stable.
- As explained by our International Business team to your Mr. Cesar Castro, an alternative way forward is that Worldcom sign a short-term agreement with PLDT reflecting our new rates for say, the February 1-28, 2003 period so that services can continue while discussions are on-going.

Look forward to a favorable reply from Worldcom.

Very truly yours,

RAMON P. OBIAS
Vice President

gcs/worldcomround2

Transmitted
1.31.03

40

EXHIBIT 9

PLDT

Feb 2003
Agreement

January 31, 2003

Received from PLDT two (2) original signed copy of the January and February 2003 termination agreement between PLDT/Philippines and AT&T/US.

Received by: Ricardo Alfaro Jr.
(AT&T Representative)

Sharon Fernandez
(AT&T Representative)

Received from : Jhon Manabat
(PLDT)

Received by RICARDO ALFARO, AT&T Rep.

Annex A
to the International Telecommunications Services Agreement

between

Philippine Long Distance Telephone Co., Inc. and

AT&T Corp.
pertaining to

TERMINATION RATES FOR

SWITCHED VOICE SERVICES
BETWEEN THE UNITED STATES AND THE PHILIPPINES

1. The undersigned Parties acknowledge that AT&T Corp. (hereinafter referred to as "AT&T") has succeeded to all rights and obligations of its affiliate, Concert, under the International Telecommunications Services Agreement ("ITSA") signed by and among Philippine Long Distance Telephone Co., Inc. (hereinafter referred to as "PLDT") and AT&T, previously assigned to Concert by AT&T and further assigned back to AT&T.

2. This Agreement amends Annex A to the ITSA between PLDT and AT&T (collectively referred to as the "Parties") to provide International Switched Voice Services between the United States (including Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands) and the Philippines and supersedes any and all prior agreements and amendments made in regard to accounting rates and/or termination rates between PLDT and AT&T.

3. The term "Switched Voice Services" (hereinafter referred to as "SVS") is defined to mean the following services, to the extent they are provided between the Parties: International Direct Dial ("IDD") which includes data and cellular traffic, Switched Digital International ("SDI"-ISDN), GSDN-IVPN Services, International Toll Free (Free-phone) Services (National Number and Universal International Free-phone Numbering "UIFN"), Paid I-800, station to station, person to person, collect, Home Country Direct ("HCD") including third country calling, calling card calls either dialed directly by a subscriber or operator handled and such other switched services as the Parties may agree upon from time to time. The term Switched Voice Services, does not include telex services. Third country calling used in this Agreement is limited to calls made using a Home Country Direct service.

4. The term "PLDT Code Specific Calling Area" is defined to mean the areas in the Philippines within the area codes of the attached document.

5. The term "Non-PLDT" is defined to mean the areas in the Philippines falling outside of the PLDT Code Specific Calling Area.

6. The term "On Net Mobile" is defined as areas in the Philippines with area codes of 912x, 918x, 919x, 920x and 98x. The term "Off Net Mobile" is defined as areas in the Philippines with area codes 9x, excluding the On Net Mobile codes.

7. This Agreement shall be in effect for a term of one (1) month beginning on the first day of February, 2003, (herein referred to as the "Term").

8. Termination rates

8.1 For minutes terminating to fixed networks in the Philippines sent by AT&T to PLDT during the Term, AT&T shall pay PLDT a per minute termination rate of (i) $0.125 for all minutes AT&T sends PLDT terminating to PLDT Code Specific Calling Area minutes and (ii) $0.145 for all minutes AT&T sends PLDT terminating to Non-PLDT Code Specific Calling Area minutes.

8.2 For minutes terminating to mobile networks in the Philippines sent by AT&T to PLDT during the Term, AT&T shall pay PLDT a per minute termination rate of (i) $0.175 for all minutes AT&T sends PLDT terminating to all On Net Mobile minutes and (ii) $0.185 for all minutes AT&T sends PLDT terminating to all Off Net Mobile minutes.

8.3 PLDT shall pay AT&T a per minute termination rate of $ 0.035 for all minutes sent to AT&T during the Term.

9. Mobile

9.1 PLDT will be responsible for supplying AT&T with changes to the mobile dialing plan (i.e. addition or deletion of numbers) specified in paragraph 6 above. These changes must be supplied to AT&T at least sixty (60) business days before the dialing plans take effect, so that AT&T has time to incorporate the changes into its systems. AT&T will not be held liable for any mobile charges as a result of the other Party's failure to provide complete, accurate and updated mobile dialing plan information.

10. Switched Transit Overflow

10.1 Switched transit overflow traffic shall be settled at the rates specified above as if the traffic were sent on the direct route.

10.2 Minutes of switched transit overflow traffic upon which settlements are paid will be measured using accumulated seconds. The method of accounting will be "Direct" and the routes are classified as "Sender Pays Transit".

11. The rates specified in paragraphs 8 above shall apply to all SVS traffic except Home Country Direct, Receive Collect, UIFN, and ITFS traffic in which case (i) AT&T will pay PLDT a per minute termination rate of $0.19 plus a surcharge as described in paragraph 12 below plus a $2.25 per minute charge for operator handled, person to person calls (Premium Sent Collect calls) and (ii) PLDT will pay AT&T a per minute termination rate of $0.19 plus a surcharge as described in paragraph 12 below.

12. During the Term, thirty (30) seconds will be added to each message for all Home Country Direct Calls for settlement purposes. A surcharge for all Operator Handled Collect calls will be applied at a rate of $1.50 on a per message basis until a new agreement is negotiated.

13. The rates apply to all classes of service for all time periods and days of the week. The rates are stated in U.S. dollars, therefore, no conversions are necessary.

14. Minutes of traffic upon which settlements are paid will be measured using accumulated seconds.

15. Reversed charge calls (i.e., collect or credit card or home country direct calls and third country calls), for purposes of this Agreement shall be treated as originating with the party that bills the call to the user.

16. Third Country calling shall be settled at the termination rate established for United States –Philippines IDD traffic as specified in paragraph 11 above.

17. During the Term, this Agreement may be cancelled by either Party upon two (2) weeks written notice to the other Party.

18. This Agreement shall become binding only upon execution by the duly authorized representative of AT&T and PLDT and, where applicable, upon submission and/or acceptance of the agreement by regulatory authorities. This Agreement shall be subject to all regulatory reviews and approvals as may be required by the laws, regulations and rules of the United States and the Philippines.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives as of the date indicated below.

The concurrence below evidences the intent to present this Agreement for approval by AT&T's duly authorized representative.

Concurred on behalf of AT&T Corp.

Name: Romulo Carlos
Title: Managing Director - Philippines

Date: ______________________________

Approved on behalf of Philippine Long Distance Telephone Company, Inc.

Name: Ramon Obias
Title: Vice President – International Business

Date: ______________________________

Approved on behalf of AT&T Corp.

Name:
Title:

Date: ______________________________

PLDT
LEGAL CENTER

EXHIBIT 10

Federal Communications Commission
Washington, D.C. 20554

January 31, 2003

VIA FAX

The Honorable Armi Jane Borje
Commissioner, National Telecommunications Commission
BIR Road, East Triangle, Diliman, Quezon City
Metro Manila, Philippines

Dear Commissioner Borje:

We are aware, based upon information from U.S. carriers, that at least three carriers that terminate international traffic in the Philippines are threatening to disrupt circuits of some U.S. carriers on the U.S.-Philippines route beginning February 1, 2003. We have been informed that at this point Philippines Long Distance Telephone Company, Globe Telecom, and Bayantel are taking this position. We understand that this is occurring in the context of negotiations in which these and other Philippine carriers have proposed to increase termination rates.

We seek your cooperation in ensuring that circuits on the U.S.-Philippines route remain active. It is in the interest of consumers and the economies of both of our countries to avoid disruptions to our communications networks.

Moreover, as you may be aware, in order to protect U.S. consumers and competition from abuses of market power by foreign carriers, the Federal Communications Commission (FCC) has taken action in situations involving the "whipsawing" of U.S. carriers. "Whipsawing" generally involves the ability of foreign carriers to obtain unduly favorable terms and conditions from U.S. carriers by setting competing U.S. carriers against one another. The FCC has previously deemed the disruption of select U.S. carrier networks in the course of rate negotiations to be "whipsawing" and has prohibited payments from U.S. carriers until such disruptions have been resolved.

If you have questions on this matter, please do not hesitate to contact me on 202-418-6437 or Jackie Ruff of my staff (202-418-7806). Thank you for your consideration.

Sincerely yours,

Donald Abelson
Chief
International Bureau

EXHIBIT 11

PLDT

February 3, 2003

The National Telecommunications Commission
BIR Road, East Triangle, Quezon City

Attention: Hon. Commissioner Armi Jane Borje
Hon. Deputy Commissioner Kathleen Heceta
Hon. Deputy Commissioner Jorge Sarmiento

Madam/Sir:

We write in connection with the Order, dated January 31, 2003 (the "Order"), issued by the Honorable Commission "directing Philippine Long Distance Telephone Company (PLDT) to maintain status quo of the existing circuits and termination rates as of this date".

The Order

At the outset, we want to assure the Honorable Commission that there was no intention on the part of PLDT to take the Order lightly.

The Order was sent to PLDT late in the afternoon of Friday, January 31, 2003. Given the serious implications of the Order, it was necessary for key senior officers of PLDT to discuss the basis and full import of the Order before PLDT could take any action. Unfortunately, several of these key senior officers of PLDT were not in their offices and could not be reached at that time.

In our good faith effort to address the Order, we met with the members of the Honorable Commission this morning to clarify PLDT's position on the matter, after having given serious consideration to the Order. PLDT's position is explained in more detail below.

Historical Context: Bilateral Private Commercial Contracts

Arrangements covering the inflow and outflow of traffic between PLDT and foreign telecommunication carriers operating in different countries and the access charges or termination rates applicable to such traffic are in the nature of **bilateral private commercial contracts**. These access charges or termination rates are not mandated by the Honorable Commission or any other Philippine governmental agency. Neither the Honorable Commission nor any Philippine governmental agency has the power or authority to impose these termination rates on PLDT (and any other Philippine telecommunication carrier) as this would constitute an undue interference on the freedom of contract.

Since the year 2001, PLDT and foreign telecommunication carriers, generally, have been negotiating and agreeing termination rates on a quarterly basis. In a few exceptional cases, the termination rates are negotiated more frequently or annually when necessitated by commercial or market considerations.

New Termination Rates: Accepted by Many Foreign Telecommunication Carriers

Consistent with existing commercial practice, and as a result of bilateral private negotiations between PLDT and foreign telecommunication carriers operating in various countries, a total of **fifty-eight (58)** telecommunication carriers in various countries (Saipan, Guam, Japan, Singapore, Hong Kong, New Zealand, Indonesia, Brunei, Malaysia, Australia, Switzerland, Cyprus, Spain, Denmark, UAE, Germany, Norway, Portugal, Qatar, Israel and the United Kingdom) **including the USA** have accepted and agreed to PLDT's new termination rates as of January 31, 2003. More foreign telecommunication carriers are expected to accept and agree to the new termination rates.

In fact, in the USA, a total of **fourteen (14)** telecommunication carriers, including a major US long distance telecommunication carrier, have already accepted and agreed to the new termination rates. In Canada, the **two (2)** major telecommunication carriers have likewise accepted and agreed to the new termination rates.

The new termination rates, which took effect as of 12:01 A.M. of February 1, 2003, have been posted by the accepting foreign telecommunication carriers prior to February 1, 2003 in order to give notice to customers in their respective countries. These accepting foreign telecommunication carriers are currently passing traffic to PLDT at the new termination rates.

AT&T and MCI Worldcom, however, have formally advised PLDT that they do not accept the new termination rates of PLDT. Both have also explicitly stated that they will contest billings under the new termination rates, which means that they will withhold payments from PLDT. The position taken by AT&T and MCI Worldcom is injurious to the interest of PLDT and other Philippine telecommunication carriers who have also adopted the new termination rates.

It is significant to point out that as of January 1, 2003 PLDT did not have any operative termination rates with AT&T and MCI Worldcom. The termination rates agreed between PLDT, on the one hand, and AT&T and MCI Worldcom, on the other hand, expired as of December 31, 2002.

New Termination Rates: Way Below US FCC Benchmark Rate

benchmark rate

As the Honorable Commission is aware, the US FCC, invoking the "long arm" nature of its regulatory powers, have consistently, in the past, forced Philippine and other foreign telecommunication carriers to bring down their respective termination rates. For traffic to the Philippines, the current US FCC mandated benchmark rate is US$0.19 per minute.

It is important for the Honorable Commission to note that PLDT's new termination rates are **well below the US FCC mandated benchmark rate of US$0.19/minute**. This is the reason why a vast number of US telecommunication carriers did not have any difficulty in accepting and agreeing to PLDT's new termination rates.

New Termination Rates: Same as Old Termination Rates of Mobile Carriers

The new PLDT termination rates are actually the same as the old termination rates being charged by Philippine cellular phone companies. The Philippine cellular phone companies have applied these rates for several years now, and the US telecommunications carriers, including the two protesting US carriers, have long accepted, and had been, paying those rates.

No Disruption of Traffic Between the USA and Philippines

It appears that the Honorable Commission is concerned that the new termination rates may have the effect of isolating the Philippines from the USA in terms of communication links. **No such isolation will take place.**

As stated earlier, a total of **fourteen (14)** US telecommunication carriers, including a major US long distance telecommunication carrier, have already accepted and agreed to PLDT's new termination rates. These accepting US telecommunication carriers are already passing traffic to PLDT at the new termination rates.

Traffic coming from AT&T and MCI Worldcom can find alternative routes through other US telecommunication carriers that have accepted and agreed to PLDT's new termination rates. These accepting US telecommunication carriers have the capacity and capability of terminating traffic from the USA to the Philippines.

Traffic delivered by US telecommunication carriers to the Philippines also consists of re-file traffic through Europe as well as Asia. PLDT has forged agreements with major European and Asian telecommunication carriers at the new termination rates. These re-file traffic can, therefore, also be terminated directly to the Philippines by the European and Asian telecommunication carriers that have accepted and agreed to PLDT's new termination rates.

Thus, contrary to the claim of AT&T and MCI Worldcom, there would hardly be any significant disruption in the flow of traffic from the US to the Philippines. Indeed, the effect of PLDT's new termination rates for the US will even foster and enhance competition in the US telecommunications market. While AT&T and MCI Worldcom are not willing to terminate traffic to the Philippines at PLDT's new termination rates, other US telecommunication carriers, with adequate capacity and capability, are willing to do so as shown by their acceptance and agreement to PLDT's new termination rate.

We should also state that when PLDT barred traffic from TeleGlobe and MCI Worldcom, both large telecommunication carriers, because of their bankruptcy and large outstanding receivables, there was very minimal disruption of traffic and the volume of traffic to the Philippines continued to be normal.

The Order is Causing Market Confusion

A copy of the Order is now circulating in the USA and is causing chaos and confusion in the market. The Order, if not withdrawn, may likely create a situation in which even the US telecommunication carriers that have already accepted and agreed to PLDT's new termination rates may contest the application of such rates and withhold payments to PLDT. **This will definitely cause irreparable damage to PLDT (and Philippine telecommunication carriers that have adopted the new termination rates).**

It is also possible that the Order will embolden accepting telecommunication carriers in other countries to follow the lead of the two protesting US telecommunication carriers and withhold payments to PLDT. **This, too, will cause irreparable damage to PLDT (and other Philippine telecommunication carriers).**

The situations described above will also have dire consequences to the country as it would materially adversely affect the inflow of hard currencies to the Philippines, especially at a time when the Philippine economy is in great need of such foreign currency inflows.

The Order Raises Grave Constitutional and Legal Questions

PLDT has been advised by its legal counsel that the Order raises grave constitutional and other legal questions that cannot be ignored.

The Order was issued without the benefit of prior hearing. As such, the Order violates due process of law.

As stated earlier, there is no operative termination rate currently existing between PLDT and AT&T and between PLDT and MCI Worldcom since the old termination rates expired as of December 31, 2002. On the other hand, PLDT has operative private commercial agreements with fifty-eight (58) telecommunication carriers with respect to the new termination rates. **That is the "status quo" prior to the date of the Order.**

The Order cannot, and should not, have the effect of forcing PLDT to agree to the termination rates demanded by AT&T and MCI Worldcom (or any other telecommunication carrier for that matter). **That would be unconstitutional as it would clearly constitute an impairment of the freedom of contract.**

Furthermore, the NTC Order cannot, and should not, have the effect of unwinding the existing private commercial agreements forged by PLDT with fifty-eight (58) telecommunications carriers in respect of the new termination rates, to PLDT's damage and prejudice. **That, too, would be unconstitutional as it would also constitute an impairment of the freedom of contract.**

If the Order is not withdrawn and is intended to give rise to the undesirable consequences described above, then the Honorable Commission would have granted **undue and unwarranted benefit to private parties**, especially the two protesting US telecommunication carriers, **in violation of existing Philippine laws**.

PLDT is submitting this letter in the hope that our clarifications will assist the Honorable Commission in appreciating the facts surrounding PLDT's new termination rates. This is, however, without prejudice to the right of PLDT to take the appropriate legal action to fully protect its interest and the interest of its public shareholders.

Very Truly Yours,

Ricardo R. Zarate

Cc: The Executive Secretary, Malacanang
The Secretary, Dept. of Transportation and Communications
Attn: Mr. Virgilio L. Pena

EXHIBIT 12

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

February 07, 2003

MEMORANDUM ORDER

Philippine Long Distance Telephone Company (PLDT)
SMART Communications Inc.
GLOBE Telecom Inc.
Bayan Telecommunications Inc.
Other Public Telecommunications Entities (PTEs) similarly situated

SUBJECT: **NTC Memorandum Order dated January 31, 2003 re: Maintaining Status Quo of existing communications circuits in the interest of public service and national welfare.**

In response to the Order of this Commission dated 31 January 2003, as duly enfranchised and authorized service providers in the Philippines, you made representations and commitments before the Commission, to always maintain your communication circuits open and ensure no disruption of service. You have likewise informed the Commission that in keeping with international practice, national laws and commercial agreements, you shall protect and promote your interest to negotiate mutually agreed international termination rates with other foreign administrations.

Further, the Commission is informed that as of this date, you have arrived at a number of bilateral agreements/arrangements for the increase in termination rates, with operating foreign administrations. While two, three or four administrations have not agreed on the increased termination rates, negotiations are on-going.

As shown, Philippine termination rates, even at increased rates, are still well below the FCC benchmark rate of US$.19/minute for low middle income economies, such as the Philippines. It is also shown that these rates are low compared with ITU suggested target settlement rates for countries with teledensity between 1 to 5 telephones per 100 population which is US$.238 per minute.

WHEREFORE, with your commitment and pursuant to the mandate to give assistance and encouragement to Philippine international carriers to establish interconnection with other countries so as to provide access to international communications highways on competitive basis, the National Telecommunications Commission (NTC) hereby AMENDS its Order dated 31 January 2003 with respect to the termination rates, as follows:

1. Philippine telecommunication carriers with existing and effective agreements with foreign telecommunication carriers relative to termination rates shall comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits and facilities covered by such agreements; and

2. Philippine telecommunication carriers without existing and effective agreements relative to termination rates are encouraged, as stated in the Order of January 31, 2003, to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service.

This Order is issued with a warning that the Commission shall exact observance of your responsibilities as a public service provider, to include that of keeping open your communication circuits to promote **PUBLIC SERVICE AND NATIONAL WELFARE** and maintain level playing field in the conduct of your operations. All other interconnection issues/concerns relative to the termination rates, such as access charges, shall be addressed accordingly in the context of this memorandum in compliance with the interconnection mandate.

FOR COMPLIANCE.

ARMI JANE R. BORJE
Commissioner

KATHLEEN G. HECETA
Deputy Commissioner

JORGE V. SARMIENTO
Deputy Commissioner

Copy furnished: The Executive Secretary, Malacañang
The Secretary, Dept. of Transportation and Communications
Attn: Undersecretary Virgilio L. Peña

EXHIBIT 13

AT&T

Mark Miller
Regional Director
Asia/Pacific Route Management

412 Mt. Kemble Ave.
Morristown, NJ 07960
Tel: 973 644-6035
Fax: 973 644-7089

February 7, 2003

Ramon Alger P. Obias
PLDT
Vice President
International Business
3/F Ramon Cojuangco Building
Makati Avenue, Makati City, 0721 Philippines
Fax: 632-812-2908

Dear Mon,

We are in receipt of the NTC Memorandum Order issued February 7, 2003. In that Order, your regulatory commission specifically stated that it expects "exact observance of your responsibilities as a public service provider, to include that of keeping open your communications circuits."

In addition, NTC ordered that "all other interconnection issues/concerns relative to termination rates, such as access charges shall be addressed accordingly in the context of this memorandum in compliance with the interconnection mandate." Settlement rate negotiations between AT&T and your company are ongoing and, therefore, your company is under a direct order by the NTC to cease blocking AT&T's circuits during these negotiations.

The NTC has now stated in two recent orders that Philippine carriers cannot block traffic pending final negotiation of a settlement rate with international carriers. Your current action with respect to prohibiting calls from completing originating with AT&T is in violation of those orders. Kindly unblock AT&T circuits immediately.

Sincerely,

Mark Miller

Cc: National Telecommunications Commission
Armi Jane R. Borje — Commissioner NTC
Kathleen G Heceta — Deputy Commissioner NTC
Jorge V Sarmiento — Deputy Commissioner NTC

The Executive Secretary, Malacañang
The Secretary, Dept. of Transportation and Communications
Attn: Undersecretary Virgilio L. Peña

EXHIBIT 14

PLDT

FACSIMILE MESSAGE

February 13, 2003

To: **Mr. Mark Miller**
Regional Director Asia Pacific
AT&T Carrier Services and Route Management
Fax No.: +1 973 644 7089

From: **PLDT Manila**
Fax No.: +63 2 812 2697

Subject: **TERMINATION RATES**

Reference: PLDT Fax CRD1/0203/044a/RPO

Dear Mark,

Further to our discussions with your Mr. Romulo Carlos, in which we expressed our openness for further negotiations with you on the termination rates at your earliest convenience, pending the conclusion of a final agreement on applicable termination rates, we again would like to propose to enter into an interim agreement on termination rates as follows:

- This interim agreement on termination rates is effective for a period of 60 days from February 1, 2003 during which time PLDT and AT&T shall negotiate in good faith a new final agreement on termination rates between PLDT and AT&T;

- The interim termination rate are as follows:

  AT&T sent paid traffic to PLDT:

Traffic Type	Rate
On Net Fixed Prepaid	US$ 0.12
On Net Fixed Postpaid	US$ 0.125
Off Net Fixed Prepaid	US$ 0.14
SPA CMTS Postpaid	US$ 0.175
GIE CMTS Postpaid	US$ 0.185

Transmitted 02/13/03

11

PLDT sent paid traffic to AT&T:

Traffic Type	Rate
All traffic – single rate	US$ 0.035

- If, during the effective period of the interim termination rates, PLDT and AT&T enter into a final agreement on termination rates, the new final termination rate shall be retroactive to February 1, 2003 and any overpayment, as a result of the retroactive nature of the final termination rates, which has been made by AT&T shall be credited by PLDT towards future termination services and any underpayment, as a result of the retroactive nature of the final termination rates, shall be promptly paid to PLDT by AT&T.

Please confirm your agreement with the forgoing by duly executing a copy of this letter and returning it to my attention, after which this agreement shall be effective immediately. Please do not hesitate to contact me directly with regard to the foregoing.

Best regards,

RAMON P. OBIAS
Vice President
International Business

Confirmed and Accepted:

Name: ______________________

Date: ______________________

Ed66/fea14

EXHIBIT 15

PLDT

FACSIMILE MESSAGE

February 13, 2003

To: **Mr. Gene Spinelli**
Regional Vice President, Asia Pacific
MCIWorldCom
Fax No.: +1 914 881 6263

From: **PLDT Manila**
Fax No.: +63 2 812 2697

Subject: **TERMINATION RATES**

Reference: PLDT Fax CRD1/0203/044b/RPO

Dear Gene,

Further to our discussions with your Mr. Bobby Castro, in which we expressed our openness for further negotiations with you on the termination rates at your earliest convenience, pending the conclusion of a final agreement on applicable termination rates, we again would like to propose to enter into an interim agreement on termination rates as follows:

- This interim agreement on termination rates is effective for a period of 60 days from February 1, 2003 during which time PLDT and MCIWorldCom shall negotiate in good faith a new final agreement on termination rates between PLDT and MCIWorldCom;

- The interim termination rate are as follows:

  MCIWorldCom sent paid traffic to PLDT:

Traffic Type	Rate
On Net Fixed Prepaid	US$ 0.12
On Net Fixed Postpaid	US$ 0.125
Off Net Fixed Prepaid	US$ 0.14
SPA CMTS Postpaid	US$ 0.175
GIE CMTS Postpaid	US$ 0.185

Transmitted 02/13/03

PLDT sent paid traffic to MCIWorldCom:

Traffic Type	Rate
All traffic – single rate	US$ 0.03

- If, during the effective period of the interim termination rates, PLDT and MCIWorldCom enter into a final agreement on termination rates, the new final termination rate shall be retroactive to February 1, 2003 and any overpayment, as a result of the retroactive nature of the final termination rates, which has been made by MCIWorldCom shall be credited by PLDT towards future termination services and any underpayment, as a result of the retroactive nature of the final termination rates, shall be promptly paid to PLDT by MCIWorldCom.

Please confirm your agreement with the forgoing by duly executing a copy of this letter and returning it to my attention, after which this agreement shall be effective immediately. Please do not hesitate to contact me directly with regard to the foregoing.

Sincerely,

RAMON P. OBIAS
Vice President
International Business

Confirmed and Accepted:

Name: ____________________

Date: ____________________

Ed66/fea14

EXHIBIT 16

AT&T

Mark Miller
Regional Director
Asia/Pacific Route Management

412 Mt. Kemble Ave.
Morristown, NJ 07960
Tel: 973 644-6035
Fax: 973 644-7089

February 14, 2003

Ramon Alger P. Obias
PLDT
Vice President
International Business
9/F Ramon Cojuangco Building
Makati Avenue, Makati City, 0721 Philippines
Fax: 632-812-2808

Dear Mon,

We are in receipt of your February 13, 2003 correspondence and are somewhat encouraged by your willingness to negotiate a interim and final settlement rate. However, we cannot agree with your interpretation of the NTC's Memorandum Order of February 7, 2003 amending its January 31, 2003 Order which clearly states that all carriers should keep open their communication circuits while negotiating either interim or final resolution of termination rate agreements. In that regard, your reestablishment of the circuits between our two companies would not only be consistent with the NTC Orders, but would also show AT&T that you are truly committed to negotiating a solution to this issue.

As a showing of our good faith, we are willing to pay an interim rate of $0.065 for fixed traffic and $0.10 for mobile traffic until we can reach agreement on new rates. Upon the opening of the circuits, we are not only willing to pay this interim rate, but are willing to negotiate a new rate for the year. We look forward to seeing the circuits opened up tomorrow and further discussions to resolve future rates for the termination of minutes.

Sincerely,

Mark Miller

Mark Miller

Cc: National Telecommunications Commission

Armi Jane R. Borje	Commissioner NTC
Kathleen G Heceta	Deputy Commissioner NTC
Jorge V Sarmiento	Deputy Commissioner NTC

The Executive Secretary, Malacañang
The Secretary, Dept. of Transportation and Communications
Attn: Undersecretary Virgilio L. Peña

CERTIFICATE OF SERVICE

The undersigned, an employee of Goldberg, Godles, Wiener & Wright, counsel to the Philippine Long Distance Telephone Company, hereby certifies that the foregoing documents were sent this 21st day of February, 2003, via first class mail, postage prepaid, to the following:

Donald Abelson
Chief
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Kathy O'Brien
International Bureau
Federal Communications Commission
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/s/ Ryan N. Terry
Ryan N. Terry